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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/602,490	06/23/2003	Michael C. Stewart	80121-07311	1114
758	7590	09/11/2007		
FENWICK & WEST LLP SILICON VALLEY CENTER 801 CALIFORNIA STREET MOUNTAIN VIEW, CA 94041			EXAMINER NGUYEN, VI X	
			ART UNIT 3734	PAPER NUMBER
			NOTIFICATION DATE 09/11/2007	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/602,490

Applicant(s)

STEWART ET AL.

Examiner

Victor X. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 December 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) 14-28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13, 29 and 30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 10/2/03;12/4/03
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election **without traverse** of Species 1, claims 1-13 and 29-30 in 12/12/2006 is acknowledged.

Claims 14-28 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a non-elected species, there being no allowable generic or linking claim.

Election was made **without traverse** in the reply filed on 12/12/2006.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basic for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-13 and 29-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Tsuruta et al (5,582,611).

Tsuruta discloses in figures 86, 88-90, a surgical device for treating tissue having the limitations as recited in the above listed claims, including: a pair of yoke shaped members at 279 mounted in spaced array which includes a slot (the slot occurs at either side of element 279), a cutter 302 mounted intermediate the spaced members which also discloses a cutting edge, where an actuator 304 which links to the cutter for controlling movement between the open and closed configurations, and where the device further includes a mounting structure at 4 or at 279 which disposes at the distal end of an elongated body 274 to support the members in spaced array with the slots, the mounting structure also supports the cutter for movement the intermediate

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members, where the actuator further comprises a manual manipulator at 284 mounted near the proximal end of the body and linked to the actuator for moving the cutter, and where the device further includes an anvil 4 interposed between the members. Note that the procedure in fig. 86 discloses the width of each of the slots convergingly tapers inwardly (occurs inferior of element 272) from the forward edge, and where the device further includes electrical connections to each of the members for applying electrocautery signals thereto (see col.29, lines 64-67 and col. 30, lines 1-10), where the cutter also includes a contoured surface at best seen in figure 104 for engaging a reference surface to transform translational movement of the cutter into translational and lateral movement relative to the anvil, and where the reference surface includes a wear resistant at 606 which disposes at the distal end of the body to engage the contoured surface of the cutter.

Conclusion

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Pat. No.5,443,463 to Yates U.S. Pat. No. 4,655,216 to Tischer

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor X. Nguyen whose telephone number is (571) 272-4699. The examiner can normally be reached on M-F (8-4.30 P.M).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hayes can be reached on (571) 272-4697. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Victor X Nguyen
Examiner
Art Unit 3734



VN

3/28/2007



MICHAEL J. HAYES
SUPERVISORY PATENT EXAMINER